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Examiner Paul D. Marcantoni
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heating the film on the substrate for a time and to a temperature sufficient to substantially remove any residual solvent; and calcining the film at a temperature at or above 350°C to remove residual surfactant

We would cancel rejected claims 116-127 if the above film-by-process claim was allowed, and the pending appeal would be withdrawn.

The above claim is amply supported in the specification, is in general agreement with your suggestions and clearly meets both definiteness and enablement requirements. No one of ordinary skill in the art would credibly argue that which is undisputed: Many surfactants, catalysts and solvents could be combined with a silica-based precursor to make the claimed film structure. (Refer to Dr. Berg's expert declaration of record and Background citations.) The heating step is supported at column 8, line 5, despite the more specific reference in the examples to 105°C, since obviously one could just as easily heat at 95°C, for example, for a longer time, or at 115°C for a shorter time. The important thing of course is that any residual solvent be substantially removed in the first heating step, as disclosed and recited. The second calcining step recites precisely the minimum disclosed temperature range for calcining set forth in the examples.

If agreement cannot be reached quickly to allow claim 128 as presented above or as might be agreed in conference, we will vigorously prosecute the inevitable appeal of all rejected claims to which we believe we are entitled.

Please give your most thoughtful consideration to allowing claim 128 in order to wrap up this very lengthy reissue process. We understand that you may wish to consult with your group's appeal committee before rendering a decision in this important matter.

If agreement is reached quickly, we would authorize an Examiner's amendment implementing the proposed claim 128 language and cancellation of others.

Thank you in advance for your prompt consideration. I will call you tomorrow, March 7, 2003, to confirm receipt of this communication and to discuss any further necessary compromise.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.



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